IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6493 of 1992
With
SPECIAL CIVIL APPLICATION No. 6494 of 1992

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTILAL MULJIBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR SK PATEL for Petitioner No(s).: 1.

MR MR PR ABICHANDANI, AGP for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 20/07/2005

ORAL JUDGMENT

In these petitions, the petitioners have challenged the order dated 31st January 1992 passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat. By the said order, the said authority was pleased to quash the NA permission granted by two separate orders dated 18.7.90 and 4.10.90 by the District Panchayat for residential purpose with respect to part of land bearing survey Nos.765 admeasuring 7082 sq. meters and 8094 sq. meters. The Deputy Secretary was pleased to set aside the NA permission on the ground that the lands in question were first purchased by Shri Ambalal Nathalal Modi and Shri Ramanlal Khemchand Soni with the permission of the Assistant Collector granted on 10th May 1968 under section 63 of the Bombay Tenancy and Agricultural Lands Act. The said purchasers were non-agriculturists and had purchased the agricultural lands with the permission of the authorities. Such permission was granted on the condition that without prior permission from the revenue authorities, the land will not be sold, exchanged or gifted. However, the land in question came to be sold to Shri Rupsinh Ranchhodsinh Chauhan and Harisinh Chauhan and entries in this regard were made on 5.2.72. Thereafter, the lands were sold by them to different persons. Shri Shantilal Muljibhai Patel became owner of 2 acres and 0 gunthas of land out of survey No.765 paiki

by registered sale deed dated 6.5.81. Entry in this regard also was certified on 25th June 1981. A portion of this land was further sold by Shri Shantilal Muljibhai to Muljibhai Karsanbhai also in the year 1981. The Deputy Secretary found that the sale transaction entered into by Shri Ambalal Nathalal Modi and Shri Ramanlal Soni were opposed to the provisions of section 63 of the Bombay Tenancy and Agricultural Lands Act since the sale was effected without prior permission from the Assistant Collector. He, therefore found that Shri Shantilal Muljibhai and Muljibhai Karsanbhai are no longer occupants of the land in question. He also observed that the Deputy Collector, Sabarkantha by his order dated 27.2.91 has ordered the vesting of the land in Government. He was, therefore, pleased to set aside the NA permission granted for the land in question.

2. The petitioners have stated in the petition that against the order dated 27.2.91 passed by the Deputy Collector, they have already preferred revision application before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal ordered maintenance of status quo. The learned advocate for the petitioners, however, was not able to state as to the status or outcome of the litigation before the Gujarat Revenue Tribunal.

3. In the present petition, what is under challenge is the order passed by the Deputy Secretary. I find that the cancellation of NA permission was based only on the fact that earlier Shri Ambalal Nathabhai Modi and Ramanlal Khemchand Soni had entered into sale transactions without permission from the authorities. However, on the date on which the said order was passed by the Deputy Secretary, the order dated 27.2.91 passed by the Deputy Collector by which the entire land was ordered to vest in the Government was already stayed by he Gujarat Revenue Tribunal. In that view of the matter, the Deputy Secretary ought not to have passed cancelling the NA permission and on this ground alone, the impugned order dated 31.1.92 is required to be and is quashed and set aside. However, the parties shall have to abide by the ultimate outcome of revision application No.848/91 filed by the petitioners in which the order dated 27.2.91 passed by the Collector is under challenge before the Gujarat Revenue Tribunal or any other proceedings carried further in this regard. Subject to the above observations, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)